

1 Alan Harris (SBN 146079)
2 David Zelenski (SBN 231768)
HARRIS & RUBLE
3 5455 Wilshire Boulevard, Suite 1800
Los Angeles, CA 90036
Telephone: (323) 931-3777
4 Facsimile: (323) 931-3366

5 Attorneys for Plaintiffs
WALTER PEREZ ESCOBAR, MARGARITO
6 GONZALEZ and FRANCISCO CISNEROS-ZAVALA

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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

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12 WALTER PEREZ ESCOBAR,
MARGARITO GONZALEZ and
FRANCISCO CISNEROS-ZAVALA,
13 individually and on behalf of all others
similarly situated,

14 Plaintiffs,

15 v.

16 WHITESIDE CONSTRUCTION
17 CORPORATION, NMS SUPPLY INC.,
J.W. CONSTRUCTION, INC. and
18 DAVID R. WHITESIDE,

19 Defendants.

20 Case No. CV-08-1120 WHA

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**SUPPLEMENTAL
DECLARATION OF DAVID
HARRIS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
LEAVE TO FILE A FIRST
AMENDED COMPLAINT**

Date: August 21, 2008
Time: 8:00 AM
Courtroom: 9
Judge: Hon. William Alsup

1 I, David Harris, declare under penalty of perjury as follows:

2 1. I am a member in good standing of the State Bar of California and am
3 one of the attorneys for Plaintiffs in the within action. I make this Supplemental
4 Declaration on behalf of the Plaintiff and in support of the Plaintiffs' Motion for
5 Leave to File a First Amended Complaint. If sworn as a witness, I could
6 competently testify to each and every fact set forth herein from my own personal
7 knowledge.

8 2. At the time of the filing of the Motion for Leave to File a First
9 Amended Complaint, Plaintiffs had still not received written notice from the
10 California Labor and Workforce Development Agency ("LWDA") confirming that
11 it did not intend to investigate, thereby giving Plaintiffs the statutory right to assert
12 claims in this action pursuant to the Labor Code Private Attorneys General Act
13 ("PAGA"), Cal. Lab. Code § 2698.3 *et seq.*

14 3. Attached hereto as Exhibit 1 is a true and correct copy of the July 28,
15 2008, California Labor and Workforce Development Agency letter, informing the
16 parties that the LWDA does not intend to investigate the claims as to NMS Supply,
17 Inc.

18 4. Attached hereto as Exhibit 2 is a true and correct copy of the July 28,
19 2008, California Labor and Workforce Development Agency letter, informing the
20 parties that the LWDA does not intend to investigate the claims as to Whiteside
21 Construction Corporation.

22 5. Attached hereto as Exhibit 3 is a true and correct copy of the August
23 20, 2008, California Labor and Workforce Development Agency letter, informing
24 our office that the LWDA does not intend to investigate the claims as to J.W.
25 Construction Inc.

26 6. The LWDA faxed our office the letters attached as Exhibit 2 and
27 Exhibit 3 at 4:58 PM on August 20, 2008.

1 I have read the foregoing, and the facts set forth herein are true and
2 correct of my own personal knowledge.

3 Executed August 20, 2008, in the County of Marin, State of California.
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5 _____/s/
6 David Harris
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EXHIBIT 1



Governor
Arnold
Schwarzenegger

Secretary
Victoria L. Bradshaw

Agricultural
Labor
Relations
Board

California
Unemployment
Insurance
Appeals
Board

California
Workforce
Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

CALIFORNIA

Labor & Workforce Development Agency

Date July 28, 2008

Harris & Ruble
5455 Wilshire Blvd., Suite 1800
Los Angeles, CA 90036

NMS Supply, Inc.
c/o Paul Simpson
Simpson, Garrity & Innes
601 Gateway
Blvd., Suite 950
South San Francisco, CA 94080

Re: LWDA No: 3679
Employer: NMS Supply, Inc.
Employee: Walter Perez Escobar

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked June 20, 2008 and after review, does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

A handwritten signature in black ink that reads "Doug Hoffner".

Doug Hoffner
Undersecretary

EXHIBIT 2



C A L I F O R N I A

Labor & Workforce Development Agency

Date July 28, 2008

Harris & Ruble
5455 Wilshire Blvd., Suite 1800
Los Angeles, CA 90036

Whiteside Construction Corporation
c/o Paul Simpson
Simpson, Garrity & Innes
601 Gateway Blvd., Suite 950
South San Francisco, CA 94080

Re: LWDA No: 3681
Employer: Whiteside Construction Corporation
Employee: Walter Perez Escobar

Dear Employer and Representative of the Employee:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked June 20, 2008 and after review does not intend to investigate the allegations.

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employee shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code". Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part".

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement.

Sincerely,

Doug Hoffner
Undersecretary

EXHIBIT 3



STATE OF CALIFORNIA Labor & Workforce Development Agency

August 20, 2008

David Harris
Harris & Ruble
5455 Wilshire Blvd, Suite 1800
Los Angeles, CA 90036

RE: LWDA#3682

Dear Mr. Harris:

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked June 20, 2008, Re: J.W. Construction, Inc. LWDA does not intend to investigate this matter since 30 calendar days has passed since the postmark date of your notice.

As a reminder to you, the provisions of Labor Code Section 2699 (j) provides that "... civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code..." Labor Code Section 2699 (l) specifies "The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."

Consequently you must advise us of the results of the litigation, and forward a copy of the court judgment or the court approved settlement agreement.

Sincerely,

Douglas Hoffer
Undersecretary

Employment
Development
Department

Employment
Training
Panel